

A

L.I.C. OF INDIA

v.

SUSHIL

JANUARY 23, 2006

B

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

*Service Law:*

C

*Reservation in Appointment—Appointment on post reserved for Scheduled Tribe—Social Status Certificate found to have been obtained wrongly and fraudulently—Employee giving an undertaking not to claim any benefit either in service or anywhere else—High Court directing that services of employee be not terminated—Held, filing of undertaking not to be treated as ratio of judgment in Milind's case—Matter remitted to High Court for decision afresh on merits—Social Status Certificate.*

D

Respondent was appointed by the appellant Corporation on the basis of his claim of being a Scheduled Tribe belonging to Halba caste. The Committee for scrutiny and verification of Tribe Claims found that the respondent wrongly and fraudulently claimed the benefit. The High Court, in view of an undertaking given on behalf of the respondent that he would not claim any benefit either in his service or anywhere else, and referring to the judgment in *State of Maharashtra v. Milind and Ors.*,\* held that services of the respondent be not terminated notwithstanding the invalidation order passed by the Scrutiny Committee. Aggrieved, the Life Insurance Corporation filed the present appeal.

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Allowing the appeal, the Court

F

**HELD.** 1.1. The protection under *Miland's* case cannot be extended to the respondent as the protection was given under the peculiar factual background of that case, and the Court felt it not desirable to deprive the society of a doctor's service. The factor which weighed with the Court in that case cannot be applied to the respondent herein. In *Miland's* case filing of the undertaking was not to be treated as ratio of the judgment.

[560-D-E-G]

H

*\*State of Maharashtra v. Milind and Ors.*, [2001] 1 SCC 4, explained and held not applicable. A

*Bank of India and Anr. v. Avinash D. Mandivikar and Ors.*, [2005] 7 SCC 690, relied on.

1.2. As the High Court has not considered the matter in its proper perspective, except relying on *Milind's* case, it would be appropriate to remit the matter to the High Court for a fresh consideration on merits of the case. [561-B-C] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 719 of 2006. C

From the Judgment and Order dated 16.7.2004 of the Bombay High Court in Writ Petition No. 3008 of 2004.

G.E. Vahanavati, SG A.V. Rangam, A. Ranganadhan and Buddy A. Ranganathan for the Appellant. D

U.U. Lalit and Mrs. Sarla Chandra for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted. E

Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court, Nagpur Bench, Nagpur. The respondent had secured employment in the Life Insurance Corporation of India (hereinafter referred to as the 'LIC') the appellant in this appeal on the basis that he belongs to Scheduled Tribe. Undisputedly, his caste was recorded as Halba. Committee for Scrutiny and Verification of Tribe Claims, Amaravati vide its order dated 30.4.2004 held that respondent's claim of belonging to Scheduled Tribe was wrong, unfounded and was a fraudulent claim. The order was questioned by respondent before the High Court by filing a writ petition. Before the High Court, learned counsel for the writ petitioner submitted that the writ petitioner was willing to file an undertaking to the effect that he will not claim any benefit on the basis of his case as Halba either in his service or anywhere else at any time for himself as well as for his legal heirs. With reference to a judgment of this Court in *State of Maharashtra v. Milind and Ors.* [2001] 1 SCC 4, the High Court held that in view of the undertaking the writ petitioner's services were not to be terminated notwithstanding invalidation order passed by the Scrutiny Committee. F G H

A Learned counsel for the LIC submitted that the approach of the High Court is clearly erroneous. In *Milind's* case (supra) this Court never laid down any principle of law having universal application. The observations in para 38 of the judgment were limited to the peculiar facts of the case. The High Court erroneously proceeded on the basis that the decision laid down a rule of universal application.

B In response, learned counsel for the respondent submitted that the respondent had already rendered about 14 years of uninterrupted and blemishless service and merely because he could not establish his Scheduled Tribe claim, the benefit already granted should not have been withdrawn. It was pointed out that undertaking in the lines noted by the High Court had already been filed.

C This Court in *R. Vishwanatha Pillai v. State of Kerala and Ors.*, [2004] 2 SCC 105 and *Lillykutty v. Scrutiny Committee, SC & ST and Ors.*, [2005] 8 SCC 283 have considered the effect of non-genuine certificates in the case of Scheduled Castes and Scheduled Tribes' claims.

D The protection under the *Milind's* case (supra) cannot be extended to the respondent no.1-employee as the protection was given under the peculiar factual background of that case. The employee concerned was a doctor and had rendered long years of service. This Court noted that on a doctor public money has been spent and, therefore, it will not be desirable to deprive the society of a doctor's service. Respondent no.1-employee in the present case is an LIC employee and the factor which weighed with this Court cannot be applied to him.

E The above position was elaborated in *Bank of India and Anr. v. Avinash D. Mandivikar and Ors.*, [2005] 7 SCC 690.

F It is noted that in spite of six opportunities the respondent No.1 did not appear before the Scrutiny Committee. That being the position the Scrutiny Committee had no other option than to take a decision in the matter. We also find that the Scrutiny Committee referred to documents which were before it and came to the conclusion about the claim of respondent No. 1 being not genuine.

G In *Milind's* case (supra), filing of the undertaking was not to be treated as the ratio of the judgment. Before us it was urged on behalf of respondent No.1 that in State of Maharashtra at the relevant time there were resolutions/  
H

Government Orders which made respondent believe that there was no fraudulent intention in claiming to be Halba. Mr. Lalit, learned counsel for respondent submitted that none of these aspects (including various G.Rs.) have been considered. The High Court in the present case proceeded on the basis as if mere filing of an undertaking in the line suggested by the writ petitioner was sufficient to bring the case under the umbrella of decision in *Milind's* case (supra). That is clearly not so. A B

As the High Court has not considered the matter in its proper perspective, except relying on *Milind's* case (supra) we think it appropriate to remit the matter to the High Court for a fresh consideration on merits of case on the grounds, if any, without influenced by any observation in this order. C

The appeal is allowed to the aforesaid extent without any order as to costs.

R.P.

Appeal allowed.